

SMALL CLAIMS

INTRODUCTION

In small claims court, disputes are settled in a fair, quick and inexpensive manner. You may ask a lawyer for advice before you go to court; however, you may not have a lawyer represent you in court. The rules are fairly simple and the hearing is short and informal.

Your claim cannot be for more than \$5,000 (except in a certain specific circumstance, refer to CCP §116.220c). If you have a claim for more than this amount, you may sue in the civil division of the Superior Court or you may sue in the small claims court and give up your right to the amount over \$5,000. You cannot file more than two cases in small claims court for more than \$2,500 each during a calendar year.

The party filing the original claim is the *Plaintiff*.

The party being sued in the original claim is the *Defendant*.

If you choose small claims court to resolve a dispute and you are the plaintiff, you give up the right to have another court review the small claims judge's decision. In other words, the plaintiff has no right of appeal. So if you should lose, that's the end of the case. When the case is decided in your favor the person or entity you sue (defendant) may appeal the judge's decision. When such an appeal is filed, the **Plaintiffs Claim** starts over again in the appellate division of the court as a whole new hearing.

If you are the defendant and wish to file a related claim against the plaintiff, you will remain the defendant and file a **Claim of Defendant**.

If you are the plaintiff and a **Claim of Defendant** is filed against you, which is ultimately decided in the defendants' favor, you may file an appeal on that decision.

Filing your Small Claims:

All of the court locations in Placer County have small claims forms. You can stop by one of the court locations and pick up a packet of forms to complete for your small claims case, or send a self-addressed stamped envelope to the proper court and have the forms returned to you. You may also access the Judicial Council forms on the Internet @ www.courtinfo.ca.gov/forms.

The filing fee is \$20.00 per claim. (\$35.00 if 12 or more claims have been filed in the last 12 months)

Service by certified mail through the court is \$8.00 per party. The plaintiff may also make arrangements for personal service by the appropriate Sheriff's department, a process server or a non-involved party over the age of 18. With certain exceptions, service must be made within the boundaries of the State of California. See CCP §116.340 for a complete description of proper service.

Per Local Rule of Court 10.9(1), "Unless otherwise ordered by the Court, all documents need to be typewritten. The application for fee waiver is exempt from this requirement provided that the fee waiver is legibly handwritten as determined by the clerk (eff. 7-01-99)."

You must sue using the defendant's exact legal name. If the defendant is a business or a corporation and you do not know the exact legal name, check with the state or local licensing agency, the county clerks office, or the office of the Secretary of State (corporate status unit). If you do not use the defendant's exact legal name (i.e., nickname) you may ask the Judge to amend the claim to include the exact legal name during the trial. CCP §116.560

If you want to sue a government agency, you must first file a claim with the agency and be denied before you can file a lawsuit in court. Strict time limits apply.

Information sources:

If you are filing a claim against a corporation, you **must** provide the name of the "Agent for Service". You can find this information by contacting the Secretary of State, 1500 11th Street, Sacramento, CA 95814, Attn: IRC Unit. Include a \$4.00 check/money order payable to "Secretary of State" and the name of the corporation. You may also reach them at www.ss.ca.gov or (916) 653-6814.

Who can file a claim?

You must be at least 18 years old to file a claim. If you are not yet 18, your parent or guardian may sue on your behalf or you may ask the court to appoint a guardian ad litem. This person will act for you in the case and is usually a parent, relative or adult friend.

Unless you fall within two technical exceptions, you must be the original owner of the claim. This means that if the claim is assigned, the buyer cannot sue in small claims court. You must also appear at the small claims hearing yourself unless you filed the claim for a corporation or other entity that is not a natural person.

If a corporation files a claim, an employee, officer or director must act on its behalf. If the claim is filed on behalf of an association or other entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or other entity must not be employed or associated solely for the purpose of representing the corporation or other entity in small claims court. You must file a declaration with the court to appear in any of these instances.

Where can you file your claim?

Your case must be filed in the proper judicial district and within that district in the proper court. This rule is called venue. The right district may be any of these:

1. Where the defendant lives or where the business involved is located,
2. Where the damage or accident happened,
3. Where the contract was signed or carried out,
4. If the defendant is a corporation, where the contract was entered,
5. For a retail installment account or sales contract or a motor vehicle finance sale,
 - a. Where the buyer lives,
 - b. Where the buyer lived when the contract was entered into,
 - c. Where the buyer signed the contract,
 - d. Where the goods or vehicle are permanently kept.

If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard.

What can you do if you are sued in small claims court?

- 1). Settle – You may settle your case before the trial. If you do, be sure that the plaintiff files a dismissal form with the court before trial.
- 2). Dispute Resolution – If you need help settling your case, you may request to be referred to a dispute resolution before trial. Placer County Superior Court refers their cases to Placer Dispute Resolution Service (916) 645-9260.

3). Default – If you do not attend the hearing, it is called a default. The plaintiff may win the amount of the claim and costs. The plaintiff may then be able to use legal procedures to take your money or property to pay the judgment.

4). Appear and Contest – You may go to the trial and disagree with the plaintiff's claim. Appear on time and bring all evidence to prove your case.

5). Appear and request payments – You may agree with the plaintiff's claim, but are unable to pay the money all at once. You may request the court to order payments you can afford. Be prepared with financial information to prove payment amounts.

6). Challenge venue – If you believe the plaintiff's claim was filed in the wrong court, write to the court before the hearing date, explain why and ask the court to dismiss the claim. Mail a copy to the plaintiff and file proof of mailing with the court. It is not necessary for you to appear on the hearing date when you have followed these procedures for challenging venue.

What happens at the trial?

Be sure you are on time for trial. If you are late the case may either be dismissed or found in the other parties favor.

Bring all necessary evidence to court. Be prepared with copies for the Judge and the other party(s).

At trial, the plaintiff will be given time to present his/her side of the case and then the defendant will be given time to present his/her side of the case. You are not allowed to argue between yourselves. The Judge will ask questions and if you have a question for the other party, you must ask it through the Judge. When the Judge has heard all the evidence, he/she may make a decision right then or take the matter under submission. In either event you will receive a copy of the decision through the mail. Make sure the clerk has a valid address for you.

How to get help with your case:

- 1). Lawyers – Both parties may ask a lawyer about the case, but a lawyer may not represent either party in court at the small claims trial. Generally, after judgment and on appeal, either party may be represented by a lawyer at their own expense.
- 2). Interpreters – If you do not speak English, you may take a family member or friend to court with you that can interpret. The Court does not supply an interpreter in small claims matters, however, the court will postpone the hearing one time so that you have time to get one.

- 3). Waiver of Fees – The court charges fees for some of its procedures. The court may excuse you from paying some fees if you cannot afford them. Ask the clerk for the *Information sheet on Waiver of Court Fees and Costs* (form 982(a)(A) to find out if you meet the requirements.
- 4). Accommodations – If you have a disability and need accommodations for that disability, please ask the court immediately to help with the accommodations of your needs prior to the hearing date.
- 5). Small Claims Advisor – Placer County has an advisor available by phone at (916) 773-7062, between the hours of 4:00 pm and 5:30 pm on Tuesdays and Thursdays. This is assistance by an attorney free of charge.
- 6). Internet websites:

www.courtinfo.ca.gov

www.placer.ca.gov/courts/smallclaims

Per GC 24004 the clerks are prohibited from giving legal advice. This means that while they can give you a form and tell you what areas of the form need to be completed, they cannot tell you what to put in those same areas. They cannot tell you who to sue or how much to sue for. They cannot tell you how to present your case in court or what the possible outcome will be. They can tell you if your form is complete, answer questions about deadlines and how to compute them, give you information from your file, tell you when cases are heard and how to get your case on calendar.